SBC Communications Inc.
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EX PARTE OR LATE FILED

April 28, 1997

EX PARTE
William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. , Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

Re: Telecommunications Services Inside Wiring; CS Docket No. 95-184, Cable Home Wiring, MM Docket No. 92-260

Friday, Kathy Rehmer, Director Regulatory Planning, SBC Communications, Inc., Lea Jones, Regulatory Director, Pacific Telesis Shared Services, Kevin Carbone, Director, Strategic Markets, Pacific Bell Video Services and I discussed the issues summarized in the attachments with Anita Wallgren, Legal Advisor to Commissioner Ness, with Meredith Jones, Chief, Cable Services Bureau, JoAnn Lucanik, Chief and Larry Walke, of the Policy and Rules Division, Cable Services Bureau, and with Joel Kaufman, Attorney, Office of the General Counsel. We are also furnishing a copy of this ex parte to Rick Chessen, Deputy Chief, Policy and Rules Division, Cable Services Bureau. We are submitting two copies of this notice in accordance with Section 1.206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,

Gina Harrison
Director - Federal Regulatory Relations
Pacific Telesis Group
(A Subsidiary of SBC Communications, Inc.)

cc:	R. Chessen	J. Lucanik
	M. Jones	A. Wallgren
	J. Kaufman	L. Walke

Attachments

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List ABCDE

Cable Inside Wire Docket
CC Docket No. 95-184

SBC/Pacific Telesis Main Points:

Cable Inside Wire demarcation point (demarc) for multiple dwelling units (MDUs) needs to be changed to the point where the common feeder wire meets the line dedicated to the unit.

A. Commission has authority to change the demarc.:
   1) 47 U.S.C. Section 543 (a)(2) - Preference for Competition
   2) 47 U.S.C. Section 548 - Development of Competition and Diversity in Video Programming Distribution
   3) Section 207 of the 1996 Telecommunications Act. Proper implementation of over-the-air reception device rules requires that the demarc be changed.

Perpetual exclusive contracts should not be permitted. Limited-time exclusive contracts should only be permitted for newly wired buildings.

A. Only permitted for new installations where a video provider has newly installed at least 75% of the inside wiring in an MDU.

B. Exclusive contracts should be limited to not more than 7 years. This provides an opportunity for the provider to recover the costs of a new system.
   1) The 7 year period would be from the point in time that the new wiring is installed.
      Example:
         If wiring put in December, 1995, the exclusive contract could remain in place until December, 2002.

The changing of demarcation and limiting the use of exclusive contracts are inextricably tied together.

A decision should be issued soon. Parties should not be permitted to delay a decision in this proceeding.

It is not a taking of real property owners' property to allow alternative video providers access to cable already installed in the premises.

Temporary access necessary to make the connection is not a taking under Loretto, which prohibited only permanent physical occupations.

More recent takings decision regarding temporary takings -- First English Evangelical Church -- is distinguishable because to be actionable a temporary taking must deny a property owner all use of the property.

Warranty of habitability analogy.

Loretto did not rule out regulations which require landlords to provide amenities to their tenants -- e.g., utility connections, mailboxes.

Loretto: "[O]ur holding today in no way alters the analysis governing the state's power to require landlords to comply with building codes and provide utility connections, mailboxes, smoke detectors, fire extinguishers, and the link in the common area of a building."

Inclusion of utility connections and mailboxes indicates regulations of non-safety-related areas are permitted.

FCC v. Florida Power: "Statutes regulating economic relations of landlords and tenants are not per se takings".

Connolly: "Contracts, however express, cannot fetter the constitutional authority of congress .... parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

Building owners have an obligation to facilitate tenants' access to video competitors.

Second Restatement of Property gives tenants the right to make changes in physical condition of leased property reasonably necessary for tenant to use property in a manner that is reasonable under the circumstances.

It is not a taking of real property owners' property to allow alternative video providers access to cable already installed in the premises (cont'd).

First Amendment

A decision impairing tenants' ability to receive the programming of their choice will directly impact the First Amendment rights of viewers to have access to a multiplicity of sources of news and other information.

Turner Broadcasting: "Assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment."

Red Lion Broadcasting: "It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences. . . ."

It is not an actionable taking of cable companies' property to give property owners the right to purchase inside wire.

Telephony inside wire precedent: "The Fifth Amendment permits a taking of property so long as the person from whom the property is taken receives 'just compensation' and so long as the taking is for a 'valid public use.'"

Cable companies will receive compensation.

If the cable companies abandon their wiring in place after being given a reasonable period of time to remove it, no takings issues arise.

We propose cable companies be given 14 days from the date they receive notice of an alternative video provider's desire to serve a building to remove wiring. Failure to do so constitutes conclusive evidence of abandonment.

Once wiring is abandoned, cable companies may not seek compensation.

If cable companies receive compensation, or they abandon wiring in place, there is no actionable taking of the cable companies' property.

We propose compensation for wiring/materials and labor. However, there should be no compensation for lost future profits from customers lost to competition.

This is a competitive issue, not an issue of "damages" for which the cable company is entitled to compensation.

A lost future income stream is also speculative.

Compensation is net of accumulated amortization, expensing, depreciation or other cost recovery.

Consistent with telephone inside wire: "We are requiring the telephone companies to abandon any claim of ownership in wiring that has been expensed or fully amortized."

Compensation schedule

There should be similar rules adopted for multiple dwelling units as were adopted for single dwelling units.

- If the incumbent provider does not remove the wiring within 14 business days, the wiring should be considered abandoned and becomes the property of the building owner.
- If the building owner wants immediate use of the wiring (prior to the 14 day period) they should have the option of purchasing the wiring, at cost.

The Commission has authority to order access to private property and transfer of cable wiring ownership to the premises' owner.

To promote competition (section 543(a)(2) (Preference for Competition) and 548 (Development of Competition and Diversity in Video Programming Distribution):

This was the basis for setting cable IW demarc in the first place.

The demarc "should give alternative providers adequate access to the cable home wiring so that they may connect the wiring to their systems without disrupting the subscriber's premises." MM docket 92-260, R&O, 8 FCC Rcd 1435, ¶ 12 (1993).

This is necessary to preclude impairments of viewers' rights to receive DBS/MMDS signals (section 207) (for wireless providers), because every antenna must be accompanied by inside wiring in order for the signal to reach the customer.

Bell Atlantic v. FCC case is distinguishable because there was no express statutory authority conferred on the FCC. Here, the foregoing provisions confer authority on the Commission.

Treatment of customers who already own inside wiring (Rule 76.802)

The number of affected MDU occupants is small -- grandfather these rights.

Going forward, preclude an individual tenant from owning inside wiring outside the individual unit. Instead, allow individual tenant to "control" inside wiring.

MDU owner could impose reasonable conditions on tenant's right to choose providers, but may not bar access altogether.

The Commission has authority to preclude exclusive contracts.

Connolly:

"Contracts, however express, cannot fetter the constitutional authority of Congress.... Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them."

Interconnection facilities provided to the international record carriers 63 FCC 2d 761. Para. 15 (1977) ("We disagree with the contention that it is beyond our authority to modify or abrogate...contracts").

Expanded interconnection with local telephone company facilities, CC Docket No. 191-141, 8 FCC Rcd 7341. Para. 17 ("Even to the extent that long-term arrangements may reflect carrier-to-carrier contracts. The Commission has authority to abrogate such contracts where it finds that they are contrary to the public interest, as we do here.")